
By: **The Speaker and the Minority Leader (By Request - Administration)**
and Delegates Edwards, Amedori, Arnick, Aumann, Bartlett, Boschert,
Boteler, Boutin, Bozman, Burns, Cane, Cryor, DeBoy, Donoghue,
Eckardt, Elliott, Elmore, Frank, Glassman, Haddaway, Impallaria,
Jennings, Kelly, Krebs, Leopold, McComas, McConkey, McKee,
McMillan, Miller, Minnick, Morhaim, O'Donnell, Parrott, Shank,
Sophocleus, Stocksdales, Walkup, Weldon, and Zirkin

Introduced and read first time: January 27, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Injury Compensation Reform Act**

3 FOR the purpose of establishing a certain limitation on noneconomic damages for
4 medical injuries for causes of action arising on and after a certain date;
5 providing that this limitation applies in the aggregate to all claims arising from
6 the same medical injury; requiring the itemization of certain awards and
7 verdicts; providing that certain provisions relating to advanced payments do not
8 apply to certain causes of action; allowing certain parties in cases involving
9 medical injuries to make certain offers of judgment; establishing procedures
10 relating to offers of judgment; requiring a party who does not accept an offer of
11 judgment to pay certain costs and attorney's fees if the judgment obtained is not
12 more favorable than the offer of judgment; prohibiting a jury from being
13 informed of certain limitations; requiring that an award or verdict of economic
14 damages exclude certain amounts for past or future medical expenses and past
15 or future loss of earnings; requiring periodic payments of certain damages in
16 excess of a certain amount for certain causes of action; establishing procedures
17 and requirements relating to periodic payments and annuities for funding
18 periodic payments; providing that certain provisions relating to damages in
19 personal injury and wrongful death cases apply to causes of action for medical
20 injuries arising before a certain date and do not apply to causes of action for
21 medical injuries arising on or after a certain date; defining certain terms;
22 making the provisions of this Act severable; and generally relating to medical
23 injury compensation reform.

24 BY repealing and reenacting, with amendments,
25 Article - Courts and Judicial Proceedings
26 Section 3-2A-01, 3-2A-05(e), 3-2A-06(f), 3-2A-08, 3-2A-09, 11-108(c), and
27 11-109(c) and (d)
28 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - Courts and Judicial Proceedings

4 Section 3-2A-08.1, 3-2A-09, 3-2A-10, 11-108(e), and 11-109(d) and (e)

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

7 Preamble

8 WHEREAS, Access to affordable medical malpractice insurance by health care
9 providers such as physicians, hospitals, nursing homes, assisted living facilities,
10 continuing care communities, osteopaths, optometrists, chiropractors, nurses,
11 dentists, podiatrists, psychologists, social workers, physical therapists, medical day
12 care centers, and hospice care programs is critical to Maryland's nationally recognized
13 health care delivery system; and

14 WHEREAS, When medical malpractice insurance becomes unaffordable or
15 unavailable for health care providers, critical health care services become restricted
16 or even unavailable and the quality of medical care available to Maryland patients is
17 diminished; and

18 WHEREAS, Maryland has taken significant steps in establishing patient
19 safety and provider accountability, including establishment of a hospital report card
20 system, and a Patient Safety Coalition to promote patient safety awareness and
21 education, the sharing of best practices, and the strengthening of oversight of adverse
22 medical events; and

23 WHEREAS, Nationally and in Maryland malpractice premiums and costs
24 have skyrocketed and malpractice insurance is becoming unaffordable and
25 unavailable in the State; and

26 WHEREAS, Excessive premiums for medical malpractice insurance divert
27 needed resources away from patient care and are a drain on the State budget; and

28 WHEREAS, Legislative reforms are needed to ensure the continued
29 availability and affordability of medical malpractice insurance for health care
30 providers and the provision of health care services in the State; now, therefore,

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
32 MARYLAND, That the Laws of Maryland read as follows:

33 **Article - Courts and Judicial Proceedings**

34 3-2A-01.

35 (a) In this subtitle the following terms have the meanings indicated unless the
36 context of their use requires otherwise.

1 (B) "ANNUITY" MEANS AN AGREEMENT TO MAKE PERIODIC PAYMENTS FOR
2 THE PERIOD OF TIME DETERMINED UNDER § 3-2A-10 OF THIS SUBTITLE.

3 [(b)] (C) "Arbitration panel" means the arbitrators selected to determine a
4 health care malpractice claim in accordance with this subtitle.

5 [(c)] (D) "Court" means a circuit court for a county.

6 [(d)] (E) "Director" means the Director of the Health Claims Arbitration
7 Office.

8 (F) "ECONOMIC DAMAGES" MEANS:

9 (1) PAST MEDICAL EXPENSES;

10 (2) FUTURE MEDICAL EXPENSES;

11 (3) PAST LOSS OF EARNINGS; AND

12 (4) FUTURE LOSS OF EARNINGS.

13 [(e)] (G) "Health care provider" means a hospital, a related institution as
14 defined in § 19-301 of the Health - General Article, A MEDICAL DAY CARE CENTER, A
15 HOSPICE CARE PROGRAM, a physician, an osteopath, an optometrist, a chiropractor, a
16 registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed
17 certified social worker-clinical, and a physical therapist, licensed or authorized to
18 provide one or more health care services in Maryland. "Health care provider" does not
19 mean any nursing institution conducted by and for those who rely upon treatment by
20 spiritual means through prayer alone in accordance with the tenets and practices of a
21 recognized church or religious denomination.

22 (H) "MEDICAL EXPENSES" MEANS ANY COSTS THAT HAVE BEEN OR WILL BE
23 INCURRED BY OR ON BEHALF OF THE CLAIMANT AS A RESULT OF A MEDICAL INJURY,
24 INCLUDING THE COSTS OF MEDICAL AND HOSPITAL, REHABILITATIVE, RESIDENTIAL
25 AND CUSTODIAL CARE AND SERVICE, SPECIAL EQUIPMENT OR FACILITIES, AND
26 RELATED TRAVEL.

27 [(f)] (I) "Medical injury" means injury arising or resulting from the rendering
28 or failure to render health care.

29 (J) "NONECONOMIC DAMAGES" MEANS:

30 (1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING,
31 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM,
32 OR OTHER NONPECUNIARY INJURY; OR

33 (2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH, EMOTIONAL
34 PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION,
35 CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE,

1 COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER DAMAGES OTHER THAN
2 ECONOMIC DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

3 3-2A-05.

4 (e) The arbitration panel shall first determine the issue of liability with
5 respect to a claim referred to it. If the arbitration panel determines that the health
6 care provider is not liable to the claimant or claimants the award shall be in favor of
7 the health care provider. If the arbitration panel determines that a health care
8 provider is liable to the claimant or claimants, it shall then consider, itemize, assess,
9 and apportion appropriate damages against one or more of the health care providers
10 that it has found to be liable. [The award shall itemize by category and amount any
11 damages assessed for incurred medical expenses, rehabilitation costs, and loss of
12 earnings. Damages assessed for any future expenses, costs, and losses shall be
13 itemized separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO
14 REFLECT THE MONETARY AMOUNT INTENDED FOR PAST MEDICAL EXPENSES,
15 FUTURE MEDICAL EXPENSES, PAST LOSS OF EARNINGS, FUTURE LOSS OF EARNINGS,
16 NONECONOMIC DAMAGES, AND OTHER DAMAGES.

17 3-2A-06.

18 (f) [Upon timely request, the trier of fact shall by special verdict or specific
19 findings itemize by category and amount any damages assessed for incurred medical
20 expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future
21 expenses, costs, and losses shall be itemized separately. If the verdict or findings
22 include any amount for such expenses, costs, and losses, a] THE TRIER OF FACT
23 SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT INTENDED FOR
24 PAST MEDICAL EXPENSES, FUTURE MEDICAL EXPENSES, PAST LOSS OF EARNINGS,
25 FUTURE LOSS OF EARNINGS, NONECONOMIC DAMAGES, AND OTHER DAMAGES. A
26 party filing a motion for a new trial may object to the damages as excessive on the
27 ground that the claimant has been or will be paid, reimbursed, or indemnified to the
28 extent and subject to the limits stated in § 3-2A-05(h) of this subtitle. The court shall
29 hold a hearing and receive evidence on the objection. If the court finds from the
30 evidence that the damages are excessive on the grounds stated in § 3-2A-05(h) of this
31 subtitle, subject to the limits and conditions stated in § 3-2A-05(h) of this subtitle, it
32 may grant a new trial as to such damages or may deny a new trial if the claimant
33 agrees to a remittitur of the excess and the order required adequate security when
34 warranted by the conditions stated in § 3-2A-05(h) of this subtitle. In the event of a
35 new trial granted under this subsection, evidence considered by the court in granting
36 the remittitur shall be admissible if offered at the new trial and the jury shall be
37 instructed to consider such evidence in reaching its verdict as to damages. Upon a
38 determination of those damages at the new trial, no further objection to damages may
39 be made exclusive of any party's right of appeal. Except as expressly provided by
40 federal law, no person may recover from the claimant or assert a claim of subrogation
41 against a defendant for any sum included in a remittitur or awarded in a new trial on
42 damages granted under this subsection. Nothing in this subsection shall be construed
43 to otherwise limit the common law grounds for remittitur.

1 3-2A-08.

2 (a) Evidence of advanced payments made pursuant to § 19-104(b) of the
3 Insurance Article is not admissible in any arbitration or judicial proceeding for
4 damages due to medical injury until there is an award, in the case of arbitration
5 proceedings, or a verdict, in the case of judicial proceedings, in favor of the claimant
6 and against the person who made the advanced payments. Upon the finding of such
7 an award or verdict, the arbitration panel, or the trier of fact, shall make a finding of
8 total damages, and shall then deduct whatever amounts it finds were paid by or on
9 behalf of the defendants pursuant to § 19-104(b) of the Insurance Article. The net
10 amount, after this deduction, shall be entered as its award or verdict.

11 (b) (1) THE PROVISIONS OF THIS SUBSECTION DO NOT APPLY TO A VERDICT
12 FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE CAUSE OF ACTION ARISES ON
13 OR AFTER JUNE 1, 2004.

14 (2) [If] FOR AN AWARD OR VERDICT FOR DAMAGES UNDER THIS
15 SUBTITLE IN WHICH THE CAUSE OF ACTION AROSE BEFORE JUNE 1, 2004, IF the
16 award or verdict exceeds the amount of advanced payments and the arbitration panel
17 or the court finds that the advanced payments were reasonable, the panel or the court
18 may [(1)] order that the amount by which the award or verdict exceeds the amount of
19 advanced payments be paid over a period of time consistent with the needs of the
20 claimant, rather than in a lump sum, and [(2)] authorize, as part of its order, the
21 creation of a trust or other mechanism to assure the periodic payments. The panel or
22 court shall provide to the claimant the option to choose either a lump sum or
23 payments paid over a period of time.

24 (c) If the advanced payment exceeds the liability of the person making it, the
25 arbitration panel or the court on appeal may order such adjustments as justice may
26 require under the award or verdict, including, where appropriate, contribution by
27 other parties found to be liable. In no event shall an advance payment in excess of the
28 liability of the person making it be repayable by the person receiving it.

29 3-2A-08.1.

30 (A) (1) (I) AT ANY TIME NOT LESS THAN 45 DAYS BEFORE THE TRIAL
31 BEGINS, A PARTY DEFENDING AGAINST A CLAIM FOR A MEDICAL INJURY MAY SERVE
32 ON THE ADVERSE PARTY AN OFFER TO ALLOW JUDGMENT TO BE TAKEN AGAINST
33 THE DEFENDING PARTY FOR THE AMOUNT OF MONEY SPECIFIED IN THE OFFER,
34 WITH COSTS THEN ACCRUED.

35 (II) WHEN THE LIABILITY OF ONE PARTY TO ANOTHER HAS BEEN
36 DETERMINED BY VERDICT OR ORDER OR JUDGMENT, BUT THE AMOUNT OR EXTENT
37 OF THE LIABILITY REMAINS TO BE DETERMINED BY FURTHER PROCEEDINGS, THE
38 PARTY ADJUDGED LIABLE MAY MAKE AN OFFER OF JUDGMENT NOT LESS THAN 45
39 DAYS BEFORE THE COMMENCEMENT OF HEARINGS TO DETERMINE THE AMOUNT OR
40 EXTENT OF LIABILITY.

41 (B) (1) IF WITHIN 15 DAYS AFTER THE SERVICE OF THE OFFER TO ALLOW
42 JUDGMENT THE ADVERSE PARTY SERVES WRITTEN NOTICE THAT THE OFFER IS

1 ACCEPTED, EITHER PARTY MAY THEN FILE WITH THE COURT THE OFFER AND
2 NOTICE OF ACCEPTANCE TOGETHER WITH AN AFFIDAVIT OF SERVICE NOTIFYING
3 THE OTHER PARTIES OF THE FILING OF THE OFFER AND ACCEPTANCE.

4 (2) WHEN THE COURT RECEIVES THE FILINGS SPECIFIED IN
5 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL ENTER JUDGMENT.

6 (C) (1) IF AN ADVERSE PARTY DOES NOT ACCEPT AN OFFER TO ALLOW
7 JUDGMENT WITHIN THE TIME SPECIFIED IN SUBSECTION (B)(1) OF THIS SECTION,
8 THE OFFER SHALL BE DEEMED WITHDRAWN AND EVIDENCE OF THE OFFER IS NOT
9 ADMISSIBLE EXCEPT IN A PROCEEDING TO DETERMINE COSTS.

10 (2) AN OFFER TO ALLOW JUDGMENT THAT IS NOT ACCEPTED DOES NOT
11 PRECLUDE A PARTY FROM MAKING A SUBSEQUENT OFFER TO ALLOW JUDGMENT
12 WITHIN THE TIME SPECIFIED IN THIS SECTION.

13 (D) IF THE VERDICT FINALLY OBTAINED BY THE ADVERSE PARTY WHO
14 RECEIVED AN OFFER TO ALLOW JUDGMENT IS NOT MORE FAVORABLE THAN THE
15 OFFER, THE ADVERSE PARTY WHO RECEIVED THE OFFER SHALL PAY THE COURT
16 COSTS AND REASONABLE ATTORNEY'S FEES OF THE PARTY MAKING THE OFFER
17 INCURRED AFTER THE MAKING OF THE OFFER.

18 3-2A-09.

19 (A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE
20 OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING
21 ON OR AFTER JUNE 1, 2004.

22 (B) (1) AN AWARD OR VERDICT UNDER THIS SUBTITLE FOR NONECONOMIC
23 DAMAGES MAY NOT EXCEED \$500,000.

24 (2) THE LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS
25 SUBSECTION SHALL APPLY IN THE AGGREGATE TO ALL CLAIMS FOR PERSONAL
26 INJURY AND WRONGFUL DEATH ARISING FROM THE SAME MEDICAL INJURY,
27 REGARDLESS OF THE NUMBER OF CLAIMS, CLAIMANTS, OR DEFENDANTS.

28 (3) (I) IN A JURY TRIAL, THE JURY MAY NOT BE INFORMED OF THE
29 LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

30 (II) IF THE JURY AWARDS AN AMOUNT FOR NONECONOMIC
31 DAMAGES THAT EXCEEDS THE LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF
32 THIS SUBSECTION, THE COURT SHALL REDUCE THE AMOUNT TO CONFORM TO THE
33 LIMITATION.

34 (C) (1) AN AWARD OR VERDICT FOR PAST MEDICAL EXPENSES SHALL
35 EXCLUDE ANY AMOUNT NOT ACTUALLY PAID BY OR ON BEHALF OF THE CLAIMANT
36 TO A HEALTH CARE PROVIDER.

37 (2) THE AWARD OR VERDICT FOR PAST OR FUTURE MEDICAL EXPENSES
38 SHALL EXCLUDE ANY AMOUNT FOR GOODS OR SERVICES THAT THE CLAIMANT HAS

1 RECEIVED, OR IS ENTITLED TO RECEIVE, UNDER THE FEDERAL INDIVIDUALS WITH
2 DISABILITIES EDUCATION ACT, PUBLIC LAW 105-17, AS AMENDED.

3 (3) THE AWARD OR VERDICT FOR PAST OR FUTURE LOSS OF EARNINGS
4 SHALL EXCLUDE ANY AMOUNT FOR FEDERAL, STATE, OR LOCAL INCOME TAXES OR
5 PAYROLL TAXES, INCLUDING SOCIAL SECURITY AND MEDICARE, THAT THE
6 CLAIMANT WOULD HAVE PAID ON THESE EARNINGS, DETERMINED AT THE TAX
7 RATES IN EFFECT FOR THE CLAIMANT AT THE TIME THE AWARD OR VERDICT IS
8 ENTERED.

9 (4) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, AN
10 AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES SHALL BE BASED SOLELY ON
11 MEDICARE REIMBURSEMENT RATES IN EFFECT ON THE DATE OF THE AWARD OR
12 VERDICT FOR THE LOCALITY IN WHICH THE CARE IS TO BE PROVIDED, ADJUSTED
13 FOR INFLATION AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

14 (II) IF ON THE DATE OF THE AWARD OR VERDICT, THE MEDICARE
15 WAIVER UNDER § 1814(B) OF THE FEDERAL SOCIAL SECURITY ACT IS IN EFFECT, AN
16 AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR HOSPITAL FACILITY
17 SERVICES SHALL BE BASED SOLELY ON THE RATES APPROVED BY THE HEALTH
18 SERVICES COST REVIEW COMMISSION IN EFFECT ON THE DATE OF THE AWARD OR
19 VERDICT FOR THE HOSPITAL FACILITY IN WHICH SERVICES ARE TO BE PROVIDED,
20 ADJUSTED FOR INFLATION IN ACCORDANCE WITH THE ANNUAL RATE UPDATES
21 APPROVED BY THE HEALTH SERVICES COST REVIEW COMMISSION.

22 (III) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR
23 NURSING FACILITY SERVICES SHALL BE BASED SOLELY ON THE STATEWIDE
24 AVERAGE PAYMENT RATE FOR THE MEDICAL ASSISTANCE PROGRAM DETERMINED
25 BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE IN EFFECT ON THE DATE
26 OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
27 SUBPARAGRAPH (V) OF THIS PARAGRAPH.

28 (IV) AN AWARD OR VERDICT FOR FUTURE MEDICAL EXPENSES FOR
29 WHICH THERE IS NO MEDICARE REIMBURSEMENT RATE, HOSPITAL FACILITY RATE,
30 OR STATEWIDE AVERAGE PAYMENT SHALL BE BASED ON ACTUAL COST ON THE DATE
31 OF THE AWARD OR VERDICT, ADJUSTED FOR INFLATION AS PROVIDED IN
32 SUBPARAGRAPH (V) OF THIS PARAGRAPH.

33 (V) FUTURE MEDICAL EXPENSES SHALL BE ADJUSTED FOR
34 INFLATION FOR THE EXPENDITURE CATEGORY OF THE CONSUMER PRICE INDEX
35 PUBLISHED BY THE BUREAU OF LABOR STATISTICS TO WHICH THE EXPENSE
36 APPLIES.

37 (VI) THE ADJUSTMENT FOR INFLATION IN THIS PARAGRAPH SHALL
38 BE BASED ON THE AVERAGE RATE OF INFLATION FOR THE 5 YEARS IMMEDIATELY
39 PRECEDING THE AWARD OR VERDICT.

1 3-2A-10.

2 (A) THIS SECTION APPLIES TO AN AWARD UNDER § 3-2A-05 OF THIS SUBTITLE
3 OR A VERDICT UNDER § 3-2A-06 OF THIS SUBTITLE FOR A CAUSE OF ACTION ARISING
4 ON OR AFTER JUNE 1, 2004.

5 (B) SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A DEFENDANT SHALL
6 PAY AN AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC
7 DAMAGES OF \$250,000 OR LESS AS A LUMP SUM WITH PAYMENTS FOR PAST
8 ECONOMIC DAMAGES.

9 (C) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, FOR AN
10 AWARD OR VERDICT FOR NONECONOMIC DAMAGES AND FUTURE ECONOMIC
11 DAMAGES OF MORE THAN \$250,000, THE ARBITRATION PANEL OR COURT SHALL:

12 (1) ORDER THE DEFENDANT TO PAY \$100,000 OF THE FUTURE ECONOMIC
13 DAMAGES AND NONECONOMIC DAMAGES AS A LUMP SUM WITH PAST ECONOMIC
14 DAMAGES;

15 (2) ORDER THE DEFENDANT TO PAY FUTURE ECONOMIC DAMAGES AND
16 NONECONOMIC DAMAGES OF MORE THAN \$100,000 PERIODICALLY TO THE CLAIMANT
17 IN THE FORM OF AN ANNUITY; AND

18 (3) ENTER AS THE AMOUNT OF THE AWARD OR VERDICT FOR FUTURE
19 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES OF MORE THAN \$100,000, THE
20 PURCHASE PRICE OF AN ANNUITY PURCHASED BY THE DEFENDANT OR THE
21 DEFENDANT'S INSURER UNDER THIS SUBSECTION.

22 (D) SUBJECT TO SUBSECTION (F) OF THIS SECTION, TO FUND FULLY FUTURE
23 ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF \$250,000, THE
24 DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN ANNUITY FOR
25 THE AMOUNT OF THE FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES
26 LESS THE \$100,000 PAID UNDER SUBSECTION (C)(1) OF THIS SECTION, WHICH
27 PRODUCES PERIODIC PAYMENTS FOR:

28 (1) FUTURE MEDICAL EXPENSES AND NONECONOMIC DAMAGES,
29 DIVIDED BY THE LESSER OF THE NUMBER OF YEARS FOR WHICH THE CLAIMANT
30 WILL NEED MEDICAL TREATMENT OR THE LIFE EXPECTANCY OF THE CLAIMANT AS
31 DETERMINED UNDER SUBSECTION (E)(2)(I) OF THIS SECTION; AND

32 (2) FUTURE LOSS OF EARNINGS, DIVIDED BY THE LESSER OF THE
33 NUMBER OF YEARS FOR WHICH THE CLAIMANT WILL SUFFER A LOSS OF EARNINGS
34 OR THE WORKING LIFE OF THE CLAIMANT AS DETERMINED UNDER SUBSECTION
35 (E)(2)(I) OF THIS SECTION.

36 (E) (1) THE PERIODIC PAYMENTS FOR FUTURE LOSS OF EARNINGS MAY NOT
37 COMMENCE UNTIL THE COMMENCEMENT DATE OF THE WORKING LIFE OF THE
38 CLAIMANT.

1 (2) (I) FOR PURPOSES OF SUBSECTION (D) OF THIS SECTION AND
2 PARAGRAPH (1) OF THIS SUBSECTION, THE LIFE EXPECTANCY OF THE CLAIMANT,
3 THE WORKING LIFE OF THE CLAIMANT, THE COMMENCEMENT DATE OF THE
4 WORKING LIFE OF THE CLAIMANT, OR THE DURATION OF THE MEDICAL EXPENSES
5 AND LOST WAGES SHALL BE THOSE ASSERTED BY THE CLAIMANT TO THE
6 ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR FUTURE
7 ECONOMIC DAMAGES.

8 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH,
9 IN AN ACTION SUBJECT TO THIS SUBTITLE, THE DEFENDANT MAY INTRODUCE
10 EVIDENCE OF THE LIFE EXPECTANCY OF THE CLAIMANT, THE WORKING LIFE OF THE
11 CLAIMANT, AND THE COMMENCEMENT OF THE WORKING LIFE OF THE CLAIMANT,
12 OR THE DURATION OF THE MEDICAL EXPENSES AND LOST WAGES.

13 (F) FOR A SURVIVAL OR WRONGFUL DEATH ACTION:

14 (1) NONECONOMIC DAMAGES SHALL BE PAID AT THE SAME TIME AS
15 PAST ECONOMIC DAMAGES; AND

16 (2) THE PROVISIONS OF THIS SECTION APPLY ONLY TO FUTURE
17 ECONOMIC DAMAGES EXCEEDING \$250,000.

18 (G) THE DEFENDANT OR THE DEFENDANT'S INSURER MAY PURCHASE
19 MULTIPLE ANNUITIES IF, IN THE AGGREGATE, THE ANNUITIES FULLY FUND THE
20 PORTION OF THE AWARD OR VERDICT FOR FUTURE ECONOMIC DAMAGES AND
21 NONECONOMIC DAMAGES IN EXCESS OF \$100,000.

22 (H) AN ANNUITY PURCHASED UNDER THIS SECTION SHALL HAVE A
23 GUARANTEED TERM EQUAL TO THE LESSER OF:

24 (1) THE LIFE EXPECTANCY OF THE CLAIMANT AS ASSERTED BY THE
25 CLAIMANT TO THE ARBITRATION PANEL OR AT TRIAL IN SUPPORT OF THE CLAIM FOR
26 FUTURE ECONOMIC DAMAGES; OR

27 (2) (I) FOR FUTURE MEDICAL EXPENSES, THE NUMBER OF YEARS FOR
28 WHICH THE CLAIMANT WILL NEED MEDICAL TREATMENT; AND

29 (II) FOR FUTURE LOSS OF EARNINGS, THE NUMBER OF YEARS FOR
30 WHICH THE CLAIMANT WILL SUFFER A LOSS OF EARNINGS.

31 (I) THE DEFENDANT'S INSURER SHALL BE OBLIGATED TO PURCHASE AN
32 ANNUITY UNDER THIS SECTION ONLY TO THE EXTENT OF THE COVERAGE THE
33 INSURER IS OBLIGATED TO PROVIDE UNDER THE INSURANCE POLICY ISSUED TO THE
34 DEFENDANT.

35 (J) THE DEFENDANT OR THE DEFENDANT'S INSURER SHALL PURCHASE AN
36 ANNUITY FROM AN INSURER THAT HAS ONE OF THE FOLLOWING RATINGS FROM
37 TWO OF THE FOLLOWING RATING ORGANIZATIONS:

38 (1) A.M. BEST COMPANY: A++ OR A+;

1 (2) FITCH INC.: AAA, AA+, AA, OR AA-;

2 (3) MOODY'S INVESTORS SERVICE CLAIMS PAYING RATING: AAA, AA1,
3 AA2, OR AA3;

4 (4) STANDARD & POOR'S CORPORATION INSURER CLAIMS PAYING
5 RATING: AAA, AA+, AA, OR AA-; OR

6 (5) IF AGREED TO BY THE CLAIMANT, A RATING FROM ANOTHER
7 NATIONAL RATING ORGANIZATION IF THE RATING AND THE RATING ORGANIZATION
8 ARE FOUND TO BE APPROPRIATE BY THE COURT.

9 (K) THE ARBITRATION PANEL OR COURT SHALL APPROVE AN ANNUITY
10 PURCHASED BY THE DEFENDANT OR THE DEFENDANT'S INSURER IF THE ANNUITY:

11 (1) MEETS THE REQUIREMENTS OF THIS SUBSECTION; AND

12 (2) WILL AT ALL TIMES BE FULLY SECURED BY ASSETS:

13 (I) HELD IN A VALIDLY ESTABLISHED SEPARATE ACCOUNT THAT
14 MAY NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS
15 THAT THE INSURER MAY CONDUCT; OR

16 (II) IN WHICH THE CLAIMANT HAS A PERFECTED SECURITY
17 INTEREST.

18 (L) THE PURCHASE OF AN ANNUITY BY THE DEFENDANT OR THE
19 DEFENDANT'S INSURER IN ACCORDANCE WITH THE TERMS OF THIS SECTION SHALL
20 BE DEEMED TO HAVE FULLY SATISFIED THE PORTION OF THE AWARD OR VERDICT
21 FOR FUTURE ECONOMIC DAMAGES AND NONECONOMIC DAMAGES IN EXCESS OF
22 \$100,000.

23 (M) THE PROVISIONS OF §§ 11-108 AND 11-109 OF THIS ARTICLE DO NOT APPLY
24 TO AN AWARD OR VERDICT FOR DAMAGES UNDER THIS SUBTITLE IN WHICH THE
25 CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

26 [3-2A-09.]3-2A-11.

27 [The] EXCEPT FOR § 3-2A-09 OF THIS SUBTITLE, THE provisions of this subtitle
28 shall be deemed procedural in nature and shall not be construed to create, enlarge, or
29 diminish any cause of action not heretofore existing, except the defense of failure to
30 comply with the procedures required under this subtitle.

31 11-108.

32 (c) An award by the health claims arbitration panel in accordance with [§
33 3-2A-06] § 3-2A-05 of this article FOR DAMAGES IN WHICH THE CAUSE OF ACTION
34 AROSE BEFORE JUNE 1, 2004, shall be considered an award for purposes of this
35 section.

1 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION
2 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN
3 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

4 11-109.

5 (c) (1) The court [or the health claims arbitration panel] may order that all
6 or part of the future economic damages portion of the award be paid in the form of
7 annuities or other appropriate financial instruments, or that it be paid in periodic or
8 other payments consistent with the needs of the plaintiff, funded in full by the
9 defendant or the defendant's insurer and equal when paid to the amount of the future
10 economic damages award.

11 (2) In the event that the court [or panel] shall order that the award for
12 future economic damages be paid in a form other than a lump sum, the court [or
13 panel] shall order that the defendant or the defendant's insurer provide adequate
14 security for the payment of all future economic damages.

15 (3) The court [or panel] may appoint a conservator under this
16 subsection for the plaintiff, upon such terms as the court [or panel] may impose, who
17 shall have the full and final authority to resolve any dispute between the plaintiff and
18 the defendant or the defendant's insurer regarding the need or cost of expenses for the
19 plaintiff's medical, surgical, custodial, or other care or treatment.

20 [(d)] (4) If the plaintiff [under this section] dies before the final periodic
21 payment of an award is made, the unpaid balance of the award for future loss of
22 earnings shall revert to the estate of the plaintiff and the unpaid balance of the award
23 for future medical expenses shall revert to the defendant or to the defendant's insurer
24 if the insurer provided the funds for the future damages award.

25 (D) IF THE HEALTH CLAIMS ARBITRATION PANEL AWARDS FUTURE
26 ECONOMIC DAMAGES IN ACCORDANCE WITH § 3-2A-05 OF THIS ARTICLE FOR
27 DAMAGES IN WHICH THE CAUSE OF ACTION ARISES BEFORE JUNE 1, 2004, THE PANEL
28 MAY ORDER THAT FUTURE ECONOMIC DAMAGES BE PAID IN ACCORDANCE WITH THE
29 PROVISIONS OF SUBSECTION (C) OF THIS SECTION.

30 (E) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN ARBITRATION
31 AWARD OR VERDICT UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE FOR DAMAGES IN
32 WHICH THE CAUSE OF ACTION ARISES ON OR AFTER JUNE 1, 2004.

33 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
34 Act or the application thereof to any person or circumstance is held invalid for any
35 reason in a court of competent jurisdiction, the invalidity does not affect other
36 provisions or any other application of this Act which can be given effect without the
37 invalid provision or application, and for this purpose the provisions of this Act are
38 declared severable.

39 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
40 effect June 1, 2004.